IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE FOURTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE G. BIKSHAPATHY

and
THE HON'BLE MR JUSTICE P.S.NARAYANA

WRIT PETITION No: 673 of 2005

Between:

1 The Chairman, Ministry of Railways,
Rail Bhavan, UOI, New Delhi.
2 The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
3 The Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
4 The Divisional Railway Manager. South Central Railway, Sanchalan Bhavan, Secunderabad.

..... PETITIONERS

AND

K. Satyanandham, Peon, O/o. Senior Divisional Mechanical Engineer, South Central Railway, Sanchalan Bhavan, Secunderabad.

.....RESPONDENT

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order or direction more particularly in the nature of the Writ of Certiorari, to call for the records relating to and the connected order dated 30th June 2004 and quash or set aside the same holding it as arbitrary, illegal and just and pass such

order or further orders.

Counsel for the Petitioners: MR.VIJAYA BHASKAR MOOLA

Counsel for the Respondent: MR.VEMURIVENKATESWARA RAO.

The Court made the following:

ORAL ORDER:- (PER GB,J.)

The Writ Petition is filed assailing the order, dated 30.06.2004, passed by the Central Administrative Tribunal, Hyderabad, in O.A.No.771 of 2003.

2. The respondent is the applicant before the Tribunal. He filed the O.A. seeking to protect his pay drawn by him in the post of railway constable as required under Section 47(1) of the Persons with Disabilities Act, 1995. The respondent was employed in the railways as a railway constable. However, he was found unfit for B-1 category and found fit for C-1 category by the Medical Superintendent, Railway Hospital, Lalaguda and accordingly a certificate was issued on 24.06.1996 to that effect. Thereafter, he was forced to go on LAP for 35 days from 25.06.1996 to 29.07.1996 and 145 days extraordinary leave without pay from 30.06.1996 to 12.12.1996. However, orders were issued by the authorities on 17.03.1997, absorbing the applicant as Peon in the grade of Rs.750-940/-.

3. The grievance of the petitioner is that he was drawing pay in the scale of Rs.825-1200/-, but after medical decategorisation he was posted as Peon. He submits that he is entitled for the same post and if such post is not available, it is incumbent on the part of the authorities to create supernumerary post in the equivalent grade, which was not accepted by the authorities, against which the petitioner approached the Tribunal for appropriate directions.

4. The learned Tribunal after considering the matter with reference to the dicta laid down by the Supreme Court reported in ***KUNAL SINGH v. UNION OF INDIA AND ANOTHER***, allowed the O.A. with the following directions:

"10. In the result, the O.A. is allowed declaring that the impugned letter dated

20th June, 2003 issued by the third respondent is illegal, arbitrary and unconstitutional and holding that-

i. the applicant shall be placed in a supernumerary post created in the scale of pay of Rs.825-1200/2750-4400/- for the period from 25th June, 1996 to 27th March, 1997 and he be paid the pay and allowance for the said period at the same rate he was drawing prior to his medical decategorisation in the said scale of pay.

ii. the applicant shall be absorbed in the alternative post/grade in the scale of pay of Rs.825-1200/2750-4400/- with effect from 28th March, 1997 consequent on his medical decategorisation as per the provisions of Section 47 (1) of the Persons with Disabilities Act, 1995; and

iii. the applicant shall be granted the first stage financial upgradation under ACP Scheme to the scale of pay of Rs.3050-4550/- with effect from 1st September, 1998 along with arrears of pay and allowances with all consequential benefits, such as, arrears of pay and allowances, seniority etc.

There shall be compliance with this order within a period of three months from the date of receipt of a copy of this order. In the circumstances, we direct the parties to bear their respective costs."

Challenging the order of the Tribunal, the present Writ Petition has been filed.

5. Learned counsel for the petitioners submits that the order of the Tribunal is illegal and contrary to law. The employee-respondent was appointed as Peon consequent on medical decategorisation, and therefore, the question of protection of pay would not arise. However, it is also stated that there is no equivalent post available. In such a situation, appointing the respondent as Peon cannot be said to be illegal and contrary to law.

6. We are afraid we cannot accept the contentions raised by the learned counsel.

7. The Supreme Court was very categoric in the protection of benefits that accrue to the disabled persons. Therefore, considering the decision of the Supreme Court, we are of the considered opinion that the order passed by the Tribunal cannot be said to be illegal and contrary to law. Similar view was also taken by this Court in W.P.Nos.26826 of 2000 and 2805 of 2001, dated 02.12.2003.

8. Under those circumstances, we do not find any ground in the Writ Petition and the same is liable to dismissed.

9. Accordingly, the Writ Petition is dismissed. No costs.

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G. BIKSHAPATHY, J

Date: 14.03.2005

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P.S. NARAYANA, J

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To

1 The Chairman, Ministry of Railways,
Rail Bhavan, UOI, New Delhi.
2 The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
3 The Chief Personnel Officer, South Central Railway, Rail Nilayam, Secunderabad.
4 The Divisional Railway Manager. South Central Railway, Sanchalan Bhavan, Secunderabad.

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6 1 CC to MR.VENKATESWARA RAO (OUT)